December 19th, 2013

FedEE
Federation of European Employers
Fédération des Employeurs Européens

Mettre à jour

Latest News from the Federation of European Employers (FedEE)

Inside this Issue:

Europe: Equal employment rights for same-sex couples

The European Court of Justice (ECJ) has ruled that employees in civil partnerships should have access to the same employment benefits as married workers.

The case in question concerned a French employee who brought proceedings against his employer when he was refused additional leave and a salary bonus given to newly married couples. He was in a newly registered civil partnership (this being his only option in France at the time).

The Court held that failure of the company's collective agreement to offer the same marriage-related benefits to same-sex couples who were unable to legally marry, amounted to direct discrimination on the grounds of sexual orientation.

Since the case was brought to court, French law and the company's collective agreement have changed to allow same-sex couples equal benefits. However, the case will have repercussions for the twenty EU countries where same-sex marriage is not in force. Even in these states, the same principle applies: married employees and workers in domestic, legally recognised relationships should enjoy the same labour rights. [Case C-267/12]

Europe: Reforms to rules on posted workers

On December 9th, the EU's Council of Ministers finally came to agreement over reforms to the Posting of Workers Directive.

If the reforms pass the legislative process, employers may be obliged to adhere to additional administrative requirements imposed under national control measures. Such measures may be introduced to ensure compliance with the law on posted workers, but will only be permitted if justified and proportionate to its aims.

It was also agreed that national laws should allow posted workers in subcontracting chains to hold the contractor (of which the employer is a direct

subcontractor) liable for claims relating to pay in addition to — or instead of — the employer. These provisions will apply only to the construction sector and individual states will be allowed to decide whether to apply the European Commission's "joint and several liability" scheme or create its own national scheme.

The draft reforms will now go before the European Parliament for its first reading.

France: Dismissal for wearing religious sign in private sector

On November 27th, the Paris Court of Appeal ruled that the dismissal of a female Muslim nursery employee for wearing a hijab was legitimate.

The Court of Appeal decided the dismissal was not discriminatory despite the fact the Supreme Court (Cour de cassation) had cancelled the dismissal in March. This latest decision was made despite the fact that the principle of secularisation (laïcité) does not apply to employees of the private sector. The complainant will be appealing the decision.

Meanwhile, a case is now before the European Court of Human Rights to establish whether the French law banning niqabas and burqas in public places is compatible with human rights and freedoms.

Germany: Long-term use of agency workers acceptable

The German Federal Labour Court (BAG) has recently reversed a ruling of a lower court by deciding that no direct employment relationship exists between an employer and an agency worker, even when the agency worker carries out their duties on a long-term basis rather than for a short, defined time span.

According to the Temporary Employment Act, temporary employment is allowed as long as the worker is not working more than "on a temporary basis", but within current German legislation no definition is given of what "temporary" means. In this case, the Court stated that the provision was not violated by the long-term use of temporary agency workers because the German legislature's intention was to avoid legal consequence for long-term placements.

This is only tempered by a BAG decision in Summer 2013, which established that a borrowing company's work council may object to the use of a temporary agency worker for longer than a short, defined time span.

Although some further clarity on the situation is brought by this case, the question remains as to what defines "temporary" work. An 18-month maximum legal limit on the use of temporary workers is, however, expected to be included in the new government coalition agreement. [BAG Case 9 AZR 51/13; BAG Case 7 ABR 91/11]

Netherlands: Employer sickness contributions for temporary employees

As reported in our last newswire, from January 1st 2014, employers of a certain size in the Netherlands will be responsible for making differentiated premium payments for sick or disabled employees employed on a temporary contract.

Currently, differentiated employer contributions to the return-to-work scheme (WGA) are paid only for permanent employees. From 2014, however, the differentiated premiums paid through the Werkhervattingskas (Whk) will be made up of three elements: the current 'fixed WGA' differentiated premium, plus the new 'flex WGA' and 'flex ZW' differentiated premiums.

These new payments will be due for employees with notional employment (such as homeworkers or commission workers) when they fall ill, temporary workers who are ill at the end of their employment contract and those who become ill within four weeks after termination of their employment. Employers will not be responsible for temporary workers hired through a temporary work agency.

Small employers (those with a payroll of less than approx. 302,000 euros) will not be affected by these additional premiums as all three premiums will be met by sectoral contributions. Medium-sized employers (those with a payroll of between approx. 302,000 and 3,020,000 euros) will be affected but the contributions will be made up partly by sectoral contributions. Large employers (those with a payroll greater than approx. 3,020,000 euros) will be fully responsible for the payment of all three premiums.

UK: Further details on shared parental leave

The UK government has now published its response to consultation regarding the proposal for shared parental leave, which will come into force in April 2015.

Currently, parents have the option of sharing 26 weeks of additional leave, but the child must be 20 weeks old and leave can only be taken in a single block. Under the new scheme, mothers will still have to take two weeks off immediately after the child is born, but the remaining 50 weeks of leave and 37 weeks of pay may be split between both the mother and the father if the qualifying conditions are met. Parents have the choice of taking leave together or separately or dividing the time into blocks. Employees who have taken less than 26 weeks' leave will be entitled to return to the same job and those employees who have taken over 26 weeks' leave will have the right to the same or similar job.

Employees will be required to notify their employers of their intention to opt-in for shared parental leave and give at least eight weeks' notice for each period of leave. A parent will be permitted to give such notification to their employer a maximum of three times. However, if the employee and employer jointly agree on changes to take leave, this will not count towards the three-notification cap. Employers will be under no obligation to accept the leave pattern requested by their employee, but they may not refuse leave either. Nonetheless, requests for intermittent leave may be rejected.

The proposal is included in the Children and Families Bill which is presently going through parliament.

UK: Pay deal reached with union

On December 9th, after a year of negotiations, the UK's Royal Mail reached a pay agreement with the Communications Workers Union (CWU). The now privatised company agreed to a 9% pay increase for their 139,000 workers over the next three years (3% backdated to April 2013, 3% in April 2014 and 2.8% in April 2015). A new employee benefit scheme will also be introduced in 2014.

The pay deal ensures legally binding protection for employees for a period of five years. It includes agreement not to offer zero-hour contracts, not to franchise, sell or outsource any part of the business and to avoid compulsory redundancies. The company will also increase employer contributions to the pension plan.

As a result of the agreement, industrial action has been severely curtailed. If the CWU holds national strikes, Royal Mail may pull out of the employee protection agreement. The pay deal is now subject to approval by the Royal Mail board and the CWU ballot.

Pay, Tax and Benefit Trends

CROATA: The government of Croatia has put forward to parliament a proposal to reduce pensions from January 1st 2014. Only pensions of more than HRK 5,000 per month will be affected by the proposed 10% reduction and certain individuals, including war veterans with 100% disability, will not be affected.

DENMARK: In a recent case, the European Court of Justice (ECJ) considered a provision of Danish national law to be unlawful. The provision excluded civil servants aged 65 and above from the right to participate in a redundancy pay scheme. Although the Court agreed that the aim of the law in question was legitimate, the law went further than necessary by not distinguishing between individuals wanting to retire at 65 and those wishing to continue in their career. [Case C-546/11]

EUROPE: An advisor to the European Court of Justice, Advocate General Bot, has published his opinion in a case concerning annual paid holiday leave. In Lock v British Gas Trading Ltd and ors, the advice given is that Article 7 of the EU Working Time Directive should be interpreted to mean that commission payments be taken into account when calculating holiday pay. This conclusion was reached in spite of the fact that the company already took the reduction in commission payments during annual leave into account when setting commission levels.

FRANCE: France's Employment Minister has declared that the national legal minimum wage will increase on January 1st 2014 to 9.53 euros per hour (1,445.38 euros per month). This is a 1.1% increase on the current rate of 9.42 euros per hour.

GREECE: The Greek parliament has approved Greece's 2014 Budget Bill, which provides for a 3 billion euro cut in expenditure and a 2.1 billion euro increase in taxes. The Prime Minister, Antonis Samaras, avoided cutting salaries or pensions to make savings. Greece's international lenders, however, who want the country to ease restrictions on bank foreclosures and mass layoffs, have not yet given their approval to the plan.

IRISH REPUBLIC: The government of the Irish Republic has approved draft legislation that will ensure greater fairness in the distribution of defined benefit pension scheme assets. The legislation provides that should both a company and a scheme become insolvent, the government will guarantee the protection of 50% of existing pensions, with pensions of €12,000 or less being 100% protected. The draft legislation would also permit the trustees of an underfunded defined benefit scheme to apply to the Pensions Board to reduce higher pension benefits as part of a scheme restructuring.

NETHERLANDS: The Dutch Social Affairs Minister, Lodewijk Asscher, has confirmed that he has no intention to reduce the length of time small companies have to pay wages to sick employees. Employers in the Netherlands are responsible for paying a minimum of 70% of an employee's normal earnings for the first 104 weeks (2 years) of sickness absence. Despite pressure from a Christian Democrat MP to reduce this period to one year for small companies, Asscher maintains that the current rules encourage employers to invest more in the care of sick employees thus yielding extra jobs and cutting costs.

PORTUGAL: Portugal’s parliament has passed the austerity Budget Bill for 2014 which is intended to save 3.9 billion euros. Under the Bill, company board members will be obliged to pay social security contributions on their pay with no maximum cap and autonomous taxation of company cars will increase to 20% for cars worth more than 20,000 euros. The government also hopes to raise the retirement age from 65 to 66

from the beginning of 2014, however this issue is still under discussion. The budget is now with the President for approval.

ROMANIA: The national minimum wage in Romania is to increase to 850 RON (190.09 euros) per month for full time workers from January 1st 2014. This is an increase of 50 RON. A further increase to 900 RON (201.28 euros) per month is due on July 1st 2014. Over 800,000 employees will benefit from these increases.

SPAIN: The Spanish Senate has adopted the law on sustainability and index revaluation of pensions. This provides for a minimum yearly increase of pensions of 0.25% but no greater increase than the consumer price index plus 0.5%. The Bill will now be sent to the House of Representatives for final approval.

UK: In its 2013 Autumn Statement, the UK government announced its intention to remove the obligation on employers to pay national insurance contributions for the earnings of employees under the age of 21 (up to the upper earnings limit). This change will come into effect from April 6th 2015. The government also announced that it intends to introduce legislation to prevent high-earning individuals living outside the UK from avoiding tax through the use of 'dual contracts'.

Other European HR News in Brief

BULGARIA: In Bulgaria, the Council of Ministers has approved and put before the National Assembly a draft law amending the Law on Health and Safety at Work. The law increases workers' control over working conditions by granting employee representatives on working conditions more rights. These include the right to access all work areas in the establishment, to participate in the investigation of accidents and the causes of occupational diseases and the possibility to demand temporary suspension of the operation of equipment or the use of dangerous substances.

BULGARIA: The Bulgarian Minister of Labour and Social Policy has announced that 230 million lev (approx. 117 million euros) will be invested in youth employment over the next two years. The money — partly funded by the European Social Fund — will be spent on measures to help young people under the age of 25 find work.

CZECH REPUBLIC: According to a recent survey, the number of part-time workers in the Czech Republic rose by nearly 60,000 to 326,000 in the first half of the year — an increase of 22%. Approximately 11% of women are part-time workers in comparison to approximately 3% of men, however these figures are considerably lower than in other EU Member States.

EUROPE: The EU Council recommendation on effective Roma integration in member states has been adopted by all 28 EU member states. The EU member states thereby commit to improving the social and economic situation of Roma communities by following the Commission's recommendations. The second recommendation, entitled "access to employment", provides for measures aiming at the elimination of discrimination and unequal treatment in the area of employment. Recommendations are not legally binding but EU countries are expected to fulfil their commitment in good faith. Member states are expected to allocate both EU and national resources to this purpose.

EUROPE: According to the OECD's recent publication "Pensions at a Glance 2013" the effective labour market exit age in Luxembourg is 7.4 years lower than the official retirement age for men and 5.4 years lower for women. Similarly, in Belgium and France the effective age of labour market exit is at least 5.0 years lower than the normal pensionable age. While the official retirement age is still different for men and women in the UK, the effective labour market exit age is 1.3 years below the official retirement age for men and 2.0 years above the official retirement age for

women. In Turkey where the official retirement ages (different for men and women) remain low, the labour market exit age is 2.8 years higher than the official retirement age for men and 5.6 years higher for women.

ITALY: Italy is implementing measures to fight youth unemployment within the framework of Decree 76/2013, which was voted in this August. An agreement providing for more resources was signed earlier this month with the southern regions of the country (Calabria, Campania, Puglia e Sicilia). The "Youth Guarantee" scheme, which aims at improving the qualifications and skills of young people between the ages of 15 and 24, has also been approved, although the details are still under discussion.

NETHERLANDS: The Dutch government is planning on extending paternity leave by an additional three unpaid days. This will be in addition to the two paid days that working fathers are currently entitled to on the birth of their child. When the new leave will be introduced is yet to be decided. The right to take care leave is also likely to be extended, from 2015, to include caring for friends or acquaintances, although full details on the conditions of taking such leave have not yet been decided upon.

NORWAY: According to the Ministry of Labour, the number of days of sick leave taken in Norway decreased by 3% between Q2 and Q3 2013. During this time the seasonally adjusted sickness absence rate decreased from 9.3% to 6.3%. Sickness absence has decreased by 12.3% since the introduction of the More Inclusive Life (IA) Agreement, although the ultimate goal is a decrease of 20%.

FedEE News:

CHRISTMAS OFFICE CLOSURE: The FedEE office will be closed between December 23rd 2013 and January 2nd 2014 although all online material will remain accessible during this period. The next edition of the newswire will be published on Thursday, January 16th 2014.

FEDEE BLOG: The new FedEE Blog is now live on the FedEE public website. Visit the website now to see the latest entries on Europe going beyond its powers, corporation tax and corporate crime, contributed by the Federation's Secretary General, Robin Chater. New articles on topics of current interest will be added to the blog weekly, so be sure to check back regularly.

CALLING ALL FEDEE FELLOWS: We invite our Fellows to join our new FedEE Fellows LinkedIn group. We hope you will use the group as a forum for the exchange of information and experiences. Please feel free to start a discussion or to contribute to those started by others. If you have not yet joined our Fellowship programme and are interested in doing so, please contact Angelika Rivero on angelika.rivero@fedee.com for more information.

NEWS BY COUNTRY: The news pertinent to each European country is now available in our knowledgebase under each individual country section. See the sub-section entitled 'Recent news'.

REFER A COLLEAGUE TO FEDEE AND WE WILL DISCOUNT YOUR MEMBERSHIP FEES: Don't forget our 'refer a friend' scheme. If you refer a colleague from another company to FedEE we will discount your

company's next-due membership fee by £100 for each new member that comes out of your referral. To refer a colleague contact Angelika Rivero, with their contact details on membershipservices@fedee.com.
